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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/482,862	06/07/95	MELI	21000000100

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EXAMINER
JOHNSON, L

ART UNIT	PAPER NUMBER
3281	7

DATE MAILED:

01/09/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/482,862

Applicant(s)

Meli et al

Examiner

Linda B. Johnson

Group Art Unit

3201



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 9-34 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 9-34 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Preliminary Amendment

1. The preliminary amendments filed 06/07/95 and 11/15/96 have been entered in their entirety. The preliminary amendment filed 03/18/96 has been entered **except** for the proposed amendment to the Abstract. This has not been entered because this application does not contain an Abstract.

Specification

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

3. The amendment filed 03/18/96 is objected to under 35 U.S.C. 132 because it introduces **new matter** into the disclosure.

35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

the deletion of "V-" in lines 7 and 8 of the Abstract;

the insertion of --about its length; as one example, it can be folded-- at page 1, line 21;

the deletion of "into V-folded condition" and insertion of --about its length-- at page 5, lines 11-12;

the deletion of "V-" at page 5, line 13;

the deletion of "into V-folded condition" and insertion of --about its length-- at page 8, lines 11-12;

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the deletion of "into the V-folded condition" at page 8, lines 13-14; and

the insertion of --For example, those of ordinary skill in the art will understand from the description above that any continuous web (whether cylindrical or oval in shape, or having other shapes) which is folded along its length (whether V-folded or not) and which has two open edges that can be sealed together can be used to provide hermetically sealed individual food slices, according to the present invention.-- at page 22, line 26.

The original disclosure does not support the added material because the added material sets forth folding a web in any manner known to one skilled in the art, with V-folding merely an example of such folding. The original disclosure supported only folding or V-folding. Further, the added material also sets forth other examples (cylindrical and oval) of folding a web. The original disclosure did not set forth any other examples of folding. Further, it is not clear that one of ordinary skill in the art would find it obvious to use cylindrical folding or oval folding instead of V-folding. It is also not clear that a web which has been folded in a cylindrical or oval manner, has a fold (as claimed in the parent application 08/098,752, now U.S. Patent 5,440,860). It is noted that applicant has not made any

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statement to support the position that the subject matter is described in the specification as filed.

Applicant is required to cancel the new matter in the response to this Office action.

Double Patenting

4. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 9-34 are rejected under the judicially created doctrine of double patenting over claims 1-13 of **U.S. Patent No. 5,440,860** since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject

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matter, as follows: an apparatus and process for packaging a food item into hermetically sealed individual slices comprising providing and feeding a web, folding the web, longitudinally hermetically sealing the web, inserting the food item, flattening the web to form a continuous slice, urging front and rear sheets of the flattened web together at intervals to define cross sealing zones and to remove the food item from between the sheets at the cross sealing zones, forming hermetic cross seals at the cross sealing zones, and cooling.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

6. Claims 9-34 are rejected under the judicially created doctrine of double patenting over claims 1 & 18 of **U.S. Patent No. 5,112,632** since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: an apparatus and process for packaging a food item into hermetically sealed individual slices comprising providing and feeding a web, folding the web, longitudinally

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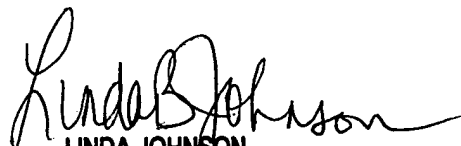
hermetically sealing the web, inserting the food item, flattening the web to form a continuous slice, forming hermetic cross seals at the cross sealing zones, and cooling.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Copies of the references which have been lined through on the PTO 1449 have not been provided, nor made of record, in the parent applications.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linda Johnson whose telephone number is (703) 308-1888.


LINDA JOHNSON
PRIMARY EXAMINER
GROUP 3200

lbj
01/03/97